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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re N.T., et al., Persons Coming
Under the Juvenile Court Law.

B293254

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. 18CCJP01519)

Plaintiff and Respondent,

v.

TIMOTHY T.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Kim L. Nguyen, Judge. Affirmed.

Emery El Habiby, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Veronica Randazzo, Deputy County Counsel, for Plaintiff and Respondent.

Timothy T. (Father) appeals from the dependency court's jurisdictional and dispositional orders concerning his minor children N.T. and K.T. Father contends that substantial evidence did not support the juvenile court's jurisdictional findings and dispositional order and that the court abused its discretion in ordering him to complete a parenting education program and conjoint counseling with his children. As we explain, Father's contentions lack merit, and accordingly, we affirm.

BACKGROUND

A. Family Background and Prior Dependency Proceedings

The family in this matter includes Father, L.T.¹ (Mother), and the minors N.T. (born in 2006), and K.T. (born in 2009). In the last several years, the Department of Children and Family Services (DCFS) has received several referrals alleging general neglect and physical and emotional abuse of the children by the parents. In 2015, it was reported that Father punched minor N.T. in the stomach, punched K.T. in the back and that Father physically and verbally abused Mother, who then obtained a five-year restraining order against Father. DCFS closed that investigation, concluding that the allegations of general neglect were unsubstantiated and the physical and emotional abuse allegations were inconclusive. In April 2016, DCFS received a referral alleging general neglect of the children. The reporting party said that the parents were going through a divorce, that Father failed to feed the children regularly, and that when K.T. broke an item that belonged to Father, he yelled at the child for several hours. Father denied the allegations, and DCFS closed the referral as inconclusive.

¹ Mother is not a party to this appeal.

In 2016, when the parents divorced, the family law court granted Mother sole legal and physical custody of the children and granted Father eight-hour visits during the day several weekends a month.

B. *Current Proceedings*

In mid-February 2018, the DCFS received three referrals alleging that Mother had neglected the children. The first referral disclosed that Mother had been leaving the children alone at night and that she was abusing sleeping pills. The second referral reported that Mother had attempted to commit suicide by taking Tylenol with Codeine. The third referral indicated that when Mother was admitted to the hospital after her suicide attempt, she had bruises on her body; she reported that Father had recently verbally and physically abused her. The reporting party was concerned about Father having the children because of Mother's injuries and her disclosures of domestic abuse.

When the DCFS social worker interviewed the children, they denied witnessing physical altercations between their parents or bruises on Mother, but they stated that they witnessed the parents argue and that they were frightened by the fighting, so they hid. They also told the social worker that Father threw and broke things when he was angry and would yell at them.

When the social worker interviewed Father about the allegations, he denied that he abused Mother or that the children witnessed any arguments he had with Mother.

Mother, however, told the social worker that although she had a restraining order protecting her from Father, he continued to stalk, harass and physically assault her, including an incident on February 14, 2018, when he hit her with a brick. Mother showed the social worker the bruise under Mother's left eye that she claimed Father had caused. Mother stated that she did not report

Father's abuse because he had threatened to take custody of the children if she reported it. Mother also said the children had not seen the violence because Father waited until they were at school or were asleep. She also explained that the children would deny all of the allegations because they were afraid of Father.

The social worker also interviewed Mother's psychologist, who confirmed Mother's claims of physical and emotional abuse and injuries. In the psychologist's view, Father's conduct exacerbated Mother's mental health conditions.² The children's babysitter also reported that Mother had told her that Father had physically assaulted her. The social worker spoke to the children's teachers, who reported that the boys had anger management problems, had poor hygiene and wore dirty clothes to school.

The social worker also interviewed Father's adult daughter from his first marriage and his first wife who divorced Father after 28 years of marriage because of domestic abuse. They reported that Father would get angry and start screaming, cursing, and breaking objects and punching walls; they said he was mentally abusive and controlling towards them. His first wife also reported that after they divorced, Father stalked her, and threatened her.

The DCFS social worker, CSW Martin, who had previously investigated the family in 2015, stated that Father continuously harassed and stalked Mother. CSW Martin opined that Father knew Mother's triggers, and took advantage of her mental health challenges and that if Mother had marks and bruises, Father likely caused them. CSW Martin also expressed concern for the children in the care of Father.

² Mother suffers from post-traumatic stress disorder (PTSD) as a result of childhood trauma and abuse, and dissociative identity disorder (DID).

On March 7, 2018, DCFS filed a section 300 petition alleging the children were described by subdivisions (a) and (b)(1), based on the violent physical altercations between Mother and Father, Mother's mental and emotional problems, and Mother placing the children in a detrimental and endangering environment. The juvenile court detained the children from the parents and ordered monitored visitation, and placed the children in foster care.

The disposition and jurisdiction report revealed that the children confirmed they observed the parents argue and saw Father throw objects when he was angry, but both children denied they witnessed physical violence between the parents. Mother explained the February 2018 incident occurred outside of her apartment building. She also stated that Father knew how to trigger her DID. Mother recounted another incident of violence where Father attacked her while the children were at school. Mother reported that on a few occasions Father would randomly show up at a store or place where she was with the children. She explained that the abuse began when the children were born.

DCFS recommended that the court sustain the section 300 petition, that the children be declared dependents of the juvenile court, and that the parents participate in family reunification services. DCFS recommended that Father participate in a mental health evaluation, domestic violence classes, individual counseling to address case issues, and a parenting education program.

At the jurisdiction hearing, Father denied the allegations of abuse. DCFS and the children's counsel asked the court to strike Mother from both the domestic violence allegations, but sustain the domestic violence allegation against Father. Father's counsel asked the juvenile court to dismiss the domestic violence allegations.

The juvenile court sustained an amended b-1 allegation regarding Mother's mental health issues and as amended, the b-2³ allegation and the b-3 allegation regarding Mother to which she had pleaded no contest. The juvenile court ordered Evidence Code section 730 evaluations of the parents and continued the hearing.

DCFS's interim reports disclosed that Father was hostile, verbally abusive and noncooperative with the children's foster parents and social worker. Father often used the children to communicate to the foster parents, which caused the children to feel as if they had been placed in the middle between Father and the foster parents. Father also refused to participate in any services.

Father's Evidence Code section 730 evaluation report indicated that Father had limited insight regarding his negative relationship with Mother and its impact on the children and that he accepted no responsibility for his conduct. Although the evaluator did not think Father suffered from psychosis, the evaluator opined that Father had poor impulse control and anger management issues, and recommended that Father's visits be monitored, that he participate in parent education courses,

³ The court sustained the following b-2 allegation: The children[']s . . . mother . . . and the children's father . . . have a history of engaging in violent physical altercations. On 02/14/2018, the father forcibly grabbed the mother's arm, and struck the mother with a brick, inflicting bruises under the mother's left eye, left arm and chest. On prior occasions, the father struck the mother inflicting marks and bruises to the mother's body. On prior occasions, the father broke objects, including a lamp and a plate, during an altercation with the mother. On prior occasions, the father continuously stalked and harassed the mother. Such violent conduct by the father against the mother endanger[s] the children's physical health and safety, and place[s] the children at risk of serious physical harm, damage, [and] danger.

individual therapy, anger management, and a domestic violence awareness course.

At the continued disposition hearing, the juvenile court found that there was clear and convincing evidence to remove the children from parental custody under sections 361 and 361.2. The court noted that Father had not participated in any services and that Father's volatility continued during the visits and he suffered from ongoing anger management issues. The court ordered Father to participate in a parent education course, and individual counseling to address case issues, including domestic violence awareness and anger management. The court also ordered Father to participate in conjoint counseling with the children and monitored visitation.

Father filed a timely notice of appeal.

DISCUSSION

On appeal, Father contends that substantial evidence did not support the juvenile court's jurisdictional and dispositional orders and that the court abused its discretion in ordering him to complete a parenting education program and conjoint counseling with his children.

A. *The Jurisdictional Order*

When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence. (*In re M.W.* (2015) 238 Cal.App.4th 1444, 1452.)

Here, Father does not assert that the court erred in exercising jurisdiction over the minors based on the section 300 allegations

involving Mother. Thus, the minors will remain dependent children of the court, and the juvenile court will be able to adjudicate parental rights regardless of the outcome of this appeal. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762.) Father acknowledges that the juvenile court has a basis for jurisdiction based on the sustained allegations against Mother. Father, however, contends that substantial evidence did not support the jurisdictional findings that his domestic abuse of Mother placed the children at risk of harm, and thus, he requests that this court exercise its discretion to consider the merits of his claim because the finding served as a basis of the dispositional orders which he challenges on appeal and because the finding will prejudice him in future custody or family law proceedings. (See *id.* at pp. 762-763 [observing that appellate courts may review jurisdictional findings, even though jurisdiction is proper under other jurisdiction allegations when the challenge finding could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings].) Given his challenge to the dispositional order, we reach the merits and conclude that sufficient evidence supported the jurisdictional finding as to Father.

Section 300, subdivision (b)(1), authorizes dependency jurisdiction when “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left.” (§ 300, subd. (b)(1).) We review jurisdictional orders for substantial evidence. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1649.) Under that standard, we view the record as a whole in the light most favorable to the juvenile court’s orders, and we indulge every inference and resolve all

conflicts in favor of the court's decision. (*Ibid.*) Further, we affirm the order if supported by substantial evidence even if other evidence supports a contrary conclusion. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 947.)

Father argues that the court should reverse the jurisdiction finding because there was no evidence of any current risk of harm to the minors based on allegations that he abused Mother. He claims that the children did not witness any of the alleged abuse and never observed marks or bruising on Mother, and thus, they were not at substantial risk of harm based on that conduct.

We do not agree. Physical violence between a child's parents may support the exercise of jurisdiction under section 300, subdivision (b) if there is evidence that the violence is ongoing or likely to continue and that it directly harmed the child physically or placed the child at risk of physical harm. (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 717.) The evidence shows that Father cannot manage his anger and that his propensity toward violence is ongoing and will likely continue, and that his conduct, even if not directed at the children, placed them at risk.

The children disclosed that they were present when the parents argued and fought verbally, and they both reported that Father's screaming and yelling frightened them, so they hid. They also witnessed Father break and throw objects in the home. It appears that Mother attempted to shield the children from her physical injuries and Father's physical abuse. Mother consistently reported that she endured physical abuse by Father to others, who observed her injuries; Father's threats, stalking and abuse continued even after Mother and Father divorced, and Mother had a restraining order in place.

Even if physical assaults and abuse of Mother occurred when the children were asleep or not in the room, we do not view those in

isolation. He threw objects and destroyed property, and he abused his other ex-wife and their children.

Although under section 300 the court must determine whether at the time of the hearing a minor is at risk of harm, the dependency court is entitled to consider past events to determine whether that child needs protection. (*In re T.V.* (2013) 217 Cal.App.4th 126, 133.) “Facts supporting allegations that a child is one described by section 300 are cumulative.” (*In re T.V.*, *supra*, at p. 133.) In sum, the dependency court properly reviewed the totality of the circumstances and had sufficient evidence to support the jurisdictional finding as to Father.

B. *The Dispositional Orders*

Father claims that sufficient evidence did not support the order removing the children from his custody and that the court abused its discretion in requiring him to participate in services and classes.

After a juvenile court asserts dependency jurisdiction over a child under section 300, it then considers the child’s disposition, including placement. (§ 358, subd. (a); Cal. Rules of Court, rules 5.684(g) & 5.690.) Section 361, subdivision (a) permits the court to “limit the control to be exercised over the dependent child by any parent.” Section 362, subdivision (a) also allows the court to “make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child.” Limitations to the court’s authority are outlined in sections 361, subdivision (c) and 361.2. Section 361, subdivision (c), applies to parents with whom the child resides at the time the dependency petition was filed. The statute prohibits removal from such custodial parents without clear and convincing evidence of substantial danger to the child, or risk thereof, and no reasonable means to protect the child without removal. (§ 361, subd. (c).)

Section 361.2, applies to parents with whom the child did not reside at the time of the dependency petition filing. When such “noncustodial” parents request custody of the child, courts shall place the child with the noncustodial parent absent clear and convincing evidence of detriment. (§ 361.2; *In re Abram L.* (2013) 219 Cal.App.4th 452, 461 [due process mandates the detriment finding be made by clear and convincing evidence before denying a noncustodial parent custody].)

On appeal, a challenge to a dispositional order is reviewed for substantial evidence. (*In re Francisco D.* (2014) 230 Cal.App.4th 73, 80). Also, when making dispositional orders, the juvenile court is not limited to the allegations of the sustained petition; rather, the court may consider all evidence on the question of the proper disposition. (§ 358, subds. (a) & (b); *In re Rodger H.* (1991) 228 Cal.App.3d 1174, 1183.)

Preliminarily we note that Father was a non-custodial parent at the time the proceedings began. Consequently, the children were not “removed” from his custody. Furthermore, at the disposition hearing Father did not request custody of the children; rather he asked the court to return the family to the status quo before the petition was filed. Before the proceedings, Father had daytime visits several weekends a month, and Mother was the sole legal and physical custodial parent.

Regardless of whether the issue is viewed as forfeited because Father failed to request placement under section 362.1, or as an invited error because he requested a return to the prior custody and visitation arrangement, we will not consider Father’s challenge to the disposition on appeal. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293 [recognizing that the forfeiture rule may apply to dependency proceedings].) We do, however, review whether the court abused its discretion in entering the dispositional orders requiring him to participate in classes and attend counseling.

Section 362, subdivision (d) provides “[t]he juvenile court may direct any reasonable orders to the parents . . . as the court deems necessary and proper to carry out this section. . . . That order may include a direction to participate in a counseling or education program, including, but not limited to, a parent education and parenting program. . . . The program in which a parent or guardian is required to participate shall be designed to eliminate those conditions that led to the court’s finding that the child is a person described by [s]ection 300.” (§ 362, subd. (d).) The dependency court has the discretion to determine what would best serve and protect the child’s interests and to fashion a dispositional order accordingly, and on appeal, we will not reverse that determination “absent a clear abuse of discretion.” (*In re Daniel B.* (2014) 231 Cal.App.4th 663, 673.)

At the disposition, the court ordered Father to participate in a parent education course, anger management, individual counseling, including domestic violence awareness, and conjoint counseling with the children. Father argues that the case plan did not serve the best interests of the children because the services offered were unnecessary. He argues that he had experience parenting his older children and the children in this case and he was bonded to the minors. The court’s order was not an abuse of discretion.

Although Father played an active role in the lives of his older children when they were young, his adult children also reported that Father was abusive and traumatized them; Father was prone to explosive and violent outbursts. The Evidence Code section 730 evaluator also recommended that Father participate in parenting classes and counseling based on his lack of insight and violent tendencies. The record also contained evidence that Father often responded to the children’s behavioral issues by yelling and screaming at them, which indicated he could benefit from learning more helpful and positive parenting techniques and that Father and

the minors would benefit from conjoint counseling. Therefore, a parenting education course and conjoint counseling between Father and the children were warranted, in the best interest of the children, and not an abuse of discretion.

DISPOSITION

The orders of the dependency court are affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

BENDIX, J.